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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

24 Cr. 542 (AS)

6 SEAN COMBS,

7 a/k/a "Puff Daddy,"
8 a/k/a "P. Diddy,"
9 a/k/a "Diddy,"
a/k/a "PD,"
a/k/a "Love,"

10 Defendant.

11 Conference

12 New York, N.Y.
October 10, 2024
2:00 p.m.

13 Before:

14 HON. ARUN SUBRAMANIAN, JR.

15 District Judge

16 APPEARANCES

17 DAMIAN WILLIAMS

18 United States Attorney for the
Southern District of New York

19 BY: EMILY JOHNSON

CHRISTY SLAVIK

MADISON SMYSER

MITZI STEINER

Assistant United States Attorneys

20 AGNIFILO INTRATER LLP

21 Attorneys for Defendant

22 BY: MARC AGNIFILO

TENY R. GERAGOS

23 SHAPIRO ARATO BACH LLP

Attorneys for Defendant

24 BY: ALEXANDRA SHAPIRO

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1 Appearances (Continued)

2 SHER TREMONTE, LLP
3 Attorneys for Defendant
BY: ANNA ESTEVAO4 ANTHONY RICCO
5 Attorney for Defendant6 ALSO PRESENT:
7 Special Agent Sean Quinn, Homeland Security Investigations10
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1 THE DEPUTY CLERK: This is the matter of 24 Cr. 542,
2 United States of America v. Sean Combs.

3 Can the parties, starting with counsel for the
4 government, please state their appearances for the record.

5 MS. JOHNSON: Good afternoon, your Honor. Emily
6 Johnson, Mitzi Steiner, Christy Slavik, Madison Smyser for the
7 government.

8 We are also joined at counsel table by Special Agent
9 Sean Quinn of Homeland Security Investigations.

10 THE COURT: Good afternoon.

11 MR. AGNIFILO: Good afternoon, your Honor. My name is
12 Marc Agnifilo, and with the Court's permission, I am going to
13 have my colleagues introduce themselves, if that's okay.

14 MS. GERAGOS: Good afternoon, your Honor. Teny
15 Geragos, Agnifilo Intrater for Mr. Combs.

16 THE COURT: Good afternoon.

17 MR. RICCO: Good afternoon, your Honor. My name is
18 Anthony Ricco. I am appearing for the defendant Sean Combs who
19 is to my right.

20 And because the family traveled great distance, in
21 particular his mom from Florida, the family is seated over my
22 shoulder and in the second and third row. That would consist
23 of his mother and all of his children.

24 THE COURT: All right. Thank you for that, and thank
25 you, everyone, for making the trip here. I really appreciate

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1 it.

2 MS. ESTEVAO: Anna Estevao of Sher Tremonte, LLP, and
3 proud to represent Mr. Combs.

4 THE COURT: Good afternoon. And good afternoon to
5 you, Mr. Combs.

6 THE DEFENDANT: Good afternoon to you.

7 THE COURT: Let's get started.

8 MR. AGNIFILO: I'm sorry to interrupt. We have one
9 person who is at the table behind.

10 MS. SHAPIRO: Alexandra Shapiro of Shapiro Arato Bach,
11 LLP, also on behalf of Mr. Combs.

12 THE COURT: Good afternoon. I'm sorry. I didn't see
13 you there.

14 MR. AGNIFILO: Thank you, your Honor.

15 THE COURT: All right.

16 First, if anyone needs to have a conversation that
17 they don't want the entire world to hear, make sure to mute
18 your microphones as we have some press feeds going into the
19 next room.

20 In terms of disclosure, I would note that Ms. Smyser,
21 her spouse is an associate attorney at Susman Godfrey, LLP,
22 where I was previously a partner. I've had no conversations
23 with Ms. Smyser or her spouse about this case, and will have no
24 communications with either of them during the pendency of this
25 case, but I wanted to make sure everyone was aware of that.

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1 With that, Ms. Johnson, how much time do we have left
2 on the Speedy Trial Act clock?

3 MS. JOHNSON: Your Honor, Judge Carter had excluded
4 time through yesterday, October 9. But also yesterday on
5 October 9, defense filed a motion, and it is the government's
6 position that that motion would toll the speedy trial clock
7 under 3161(h) (1) (D).

8 THE COURT: Mr. Agnifilo?

9 MR. AGNIFILO: Yes, your Honor.

10 THE COURT: Any objections to that?

11 MR. AGNIFILO: So, I agree with my colleague, with the
12 government that the motion would toll the speedy trial clock
13 running forward.

14 I do not respectfully agree that the speedy trial
15 waiver is effective because we objected to any speedy trial
16 waiver, and Judge Carter waived speedy trial over our
17 objection, so we'll leave that as an open issue.

18 But we do agree, going forward, speedy trial has
19 been tolled until your Honor decides the motion.

20 THE COURT: Judge Carter made a finding that the time
21 would be excluded under the Speedy Trial Act.

22 MR. AGNIFILO: He did.

23 THE COURT: You may not have consented to that,
24 but there was a finding made, correct?

25 MR. AGNIFILO: That's correct, your Honor.

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1 THE COURT: Let's proceed.

2 You've requested -- I am going to work backwards. So
3 the defense has requested a trial in April or May 2025, and I
4 can give you either of those months. I think in terms of the
5 scope of discovery, which we'll talk about, and the anticipated
6 motions, it makes most sense to have trial start in May. So
7 May 5. But I'll hear you. If you want April, I'll give you
8 April.

9 MR. AGNIFILO: No, your Honor, we were very much
10 deferring to the Court's schedule, and it is a sizable case in
11 terms of discovery. And I appreciate your Honor giving us a
12 May 5 trial date.

13 THE COURT: All right. So trial will commence on
14 May 5, 2025.

15 Ms. Johnson, what is the anticipated length of trial
16 from the government's perspective?

17 MS. JOHNSON: At present, your Honor, given the
18 schedule for trial outlined in your Honor's individual rules,
19 with a trial date that ends by approximately 3 o'clock every
20 day, the government would estimate three weeks for the
21 government's case under the current charged indictment, with
22 all of the caveats that we typically give, that we can't
23 estimate the length of defense cross and the like.

24 I do want to note for the Court that our investigation
25 is very much ongoing, and there is a possibility that there

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1 will be a superseding indictment, which could affect the length
2 of the trial.

3 THE COURT: Understood.

4 And from the defense?

5 MR. AGNIFILO: Yes, your Honor. There will be a
6 defense case, I expect. It is hard at this early stage to say
7 what it would be. I would imagine a week would probably be
8 sufficient. But as we move through the discovery and have
9 conversations with the government, we can fine tune that.

10 THE COURT: You'll have the time that you need.

11 And in addition, Ms. Johnson, you had raised the trial
12 day, and I found that that works. But if the parties discuss
13 and they want to propose something different, I'm all ears, so
14 just let me know.

15 MS. JOHNSON: Of course, your Honor. Thank you.

16 THE COURT: So let's turn to discovery.

17 Ms. Johnson, am I right that the government intends to
18 complete its discovery by the end of the year?

19 MS. JOHNSON: Yes, your Honor. The government
20 currently believes that it will complete the discovery in its
21 possession by the end of this year.

22 THE COURT: Mr. Agnifilo, any issues with that timing?
23 I'm going to get to some of the specific issues you raise, but
24 just in terms of an overall completion date by the end of year,
25 does that sound reasonable from your side?

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1 MR. AGNIFILO: I think it's reasonable given the
2 volume of the discovery, and I also think it's reasonable for
3 our trial date.

4 THE COURT: All discovery will be completed by
5 December 31, 2024.

6 Let's get to the specific issues, Mr. Agnifilo, that
7 you raised. I want to make sure I'm not missing anything. The
8 parties' letter from yesterday was very helpful, but it wasn't
9 clear to me that there are any current disputes.

10 So, Mr. Agnifilo, the floor is yours to raise any
11 disputes. And I am happy to facilitate a dialogue to see if we
12 can resolve them here.

13 MR. AGNIFILO: No, I'm going to try to keep disputes
14 to a minimum. We have a fairly --

15 THE COURT: Raise any disputes you want.

16 MR. AGNIFILO: I know, your Honor. I appreciate it.
17 We have a very active dialogue with the prosecutors, and we're
18 trying to resolve any of these discovery issues on our own.

19 There have been many, many individual things that have
20 come up. I think we've really resolved all of them.
21 Obviously, from my perspective, and I understand the
22 government's perspective, and I think the end of the year is
23 certainly reasonable. We will probably continue to encourage
24 the government to give us things as quickly as possible, and
25 try to work with them in doing that.

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1 So I don't have any disputes at the moment, and we're
2 going to try to work things out collaboratively. And if we
3 can't work something out, we'll come back to your Honor.

4 THE COURT: That's fine.

5 Ms. Johnson, you've done this already, and I've read
6 the transcript from the prior hearings and I've read what's in
7 your letter, but if there is anything you wanted to add in
8 terms of the parameters of discovery, what we can anticipate
9 coming up next, I think it might be helpful while we are all
10 sitting here.

11 MS. JOHNSON: Absolutely, your Honor. And I'm of
12 course guided by the Court in how much detail the Court would
13 like about discovery, and I'm prepared to go into as much
14 detail as would be helpful to your Honor.

15 THE COURT: Why don't we frame it in terms of the
16 issues that the defense has raised. So one of the things they
17 raised was Mr. Comb's devices and any hard drives that derive
18 from him.

19 MS. JOHNSON: Absolutely. And as we said in our
20 letter and as we informed the defense, that is our first
21 priority for discovery.

22 Let me back up one moment, your Honor. We have made a
23 production on Monday of this week of 1 terabyte of data. That
24 data, that contained three of the defendant's electronic
25 devices, one of which was specifically requested to be produced

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1 first by defense counsel. And all of the search warrants,
2 search warrants and the accompanying affidavits, which set
3 forth the probable cause for the search warrants that were
4 issued, and will allow defense to begin reviewing and
5 contemplating motions. And we produced that first for a
6 reason, so they would have that material and begin to
7 contemplate motion practice early.

8 As we've told them, we are prioritizing at present
9 wholesale copying of the defendant's electronic devices that
10 were seized in various searches that the government performed.

11 So, I want to go through those searches individually.
12 I think it could be helpful to defense and to the Court.

13 There are approximately 96 electronic devices seized
14 from the defendant on March 25, 2024, across three separate
15 searches. The searches occurred at his residence in Los
16 Angeles, his residence in Miami, and his person at a private
17 airport in Florida.

18 And from those electronic devices we have been
19 diligently working to extract the material from those devices
20 so that it can be produced to the defense. And for each of
21 those devices, the data has to first be extracted before we
22 have something to produce.

23 Top-level takeaway is that nearly all of the extracted
24 data belonging to the defendant will be produced to him in the
25 upcoming few productions, which we estimate at this time will

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1 occur on a rolling basis over the next 30 days. So within a
2 month he should have almost all of the data belonging to him
3 that was seized.

4 We have attempted to extract all of the devices that
5 we've seized. We have not yet been able to extract every
6 device that we have seized, and there's many different reasons
7 for that, and I'll highlight a few for the Court.

8 Current technology doesn't always allow us to extract
9 particularly newer devices. So the security and whatnot on
10 newer electronic devices is more sophisticated than the
11 government's decryption tools.

12 This most acutely affects laptops, current phones, and
13 some hard drives with encryption. The government's ability to
14 decrypt and extract those devices is constantly evolving as
15 people try to catch up to the technology of the phone
16 companies.

17 We anticipate that we will be able to extract some of
18 the unextracted devices to date. And if we do, we will of
19 course immediately produce those devices.

20 Another issue that we are having, and another reason
21 why we haven't been able to extract every device that was
22 seized so far, is that our current forensic tools also do not
23 always support older technology. So, for example, particularly
24 with older tablets, we don't yet have forensic tools that are
25 able to extract those devices, and so we are continuing to look

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1 for solutions to be able to get into those devices, extract
2 them, and produce them to the defense.

3 There is also a handful of devices that we seized that
4 were damaged in some way, that prohibit at present their
5 extraction. So we are seeking to have those devices repaired
6 and then reattempt extraction.

7 So at a high level, that is sort of the main three
8 reasons why not every device has been yet extracted.

9 But on those three searches, just to give the Court a
10 quick summary, at the airport, nine devices were seized, seven
11 have been extracted, one was already produced, the remaining
12 six will be in our next production.

13 In Miami, 36 devices were seized, 29 were extracted,
14 19 are slated for the next production. And there are eight
15 devices from Miami that are currently extracted that are large
16 in size, and we're going to need to engage in a dialogue with
17 defense counsel about how we can produce those, because the
18 size is extraordinary and totals over 90 terabytes. So we will
19 engage in a dialogue with the defense about the production of
20 those devices.

21 Finally, the L.A. residence there were 51 devices
22 seized, 29 were able to be extracted, and 27 of those 29 are
23 slated for the next production.

24 We also seized the defendant's phone when he was
25 arrested in September. That phone has been extracted, it is

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1 being copied at present, and will be produced in our next
2 production.

3 And we also searched the hotel room of the defendant
4 after his arrest. Three of his devices were seized, two have
5 been extracted, and both are slated to be produced in our next
6 production.

7 We have not yet been able to get into the last device
8 there, which is a laptop that we expect at some point we might
9 be able to get into, but it is a current technology problem.

10 So, all those devices, as I've just said, are slated
11 to be in our next production and are at present being copied.
12 We initiated that copying process on Tuesday. We checked in
13 before coming to court today. The current estimate is that
14 those devices that are being copied will be done hopefully at
15 some point next week. It nears at least 8 terabytes of data.
16 And the reason I flag that for the Court is to show the volume,
17 but also that the size of the electronic devices does
18 actually -- the machine time it takes to just physically copy
19 them and produce them is actually quite extensive at times.
20 And so it will probably take up to two weeks to fully copy all
21 this material and make it available to the defense.

22 So I hope that addresses your Honor's question with
23 respect to the defendant's devices.

24 THE COURT: Yes.

25 Mr. Agnifilo, do you have any questions or issues that

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1 you wanted to raise as to that summary?

2 MR. AGNIFILO: No, your Honor, no. These are things
3 we can work out. That sounds like a reasonable overview.

4 MS. JOHNSON: Okay. And just picking up from there,
5 we are also at the same time working on what I would consider
6 sort of another core Rule 16 production, the subpoena returns,
7 the remaining materials from the search warrants that are not
8 electronic devices. That is underway. We have initiated --
9 some of our subpoena returns are housed in a Relativity
10 database. We've initiated the process of production with our
11 vendor, and should have that production available at the end of
12 this week or early next week, at which point we will make it
13 available to defense counsel.

14 And also estimated within the next 30 days, we'll make
15 rolling productions of the remainder of the subpoena returns in
16 our possession at the moment and the remainder of the search
17 warrant returns, which include things like cell phone location
18 information and the like.

19 THE COURT: Okay. Understood.

20 And there was a reference in the letter to the
21 requested *Brady* material. It was unclear from the letter what
22 that was exactly. I wanted to make sure there wasn't any
23 disagreement or people not being on the same page.

24 MS. JOHNSON: Your Honor, the defense has sent a *Brady*
25 request to the government, which is fairly standard. The

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1 government's in receipt of that request. The government
2 understands its obligations under *Brady* and its progeny. It
3 also understands its obligations under Rule 5(f) and it will
4 comply with them.

5 THE COURT: I'll preview for you at the next
6 conference I will ask the government how it has complied with
7 its *Brady* obligations. I've asked that question before without
8 making that preview, and it has sometimes been surprising, so
9 I'm telling you right now that I am going to ask that question
10 at the next conference.

11 MS. JOHNSON: Thank you, your Honor.

12 THE COURT: Mr. Agnifilo, we can keep going through
13 this, but I am really doing this for the defense's benefit so I
14 can make sure that there aren't any current disputes or lack of
15 information that I can be helpful in resolving.

16 But it looks like the parties have been talking and
17 that there is a good dialogue between the parties, so I don't
18 want to belabor the subject of the contents of discovery,
19 unless there is an issue you'd like to raise.

20 MR. AGNIFILO: No, no, thank you, I appreciate the
21 Court going through it. It is helpful to us and we can
22 continue our dialogue and go that way. Thank you.

23 THE COURT: All right. Ms. Johnson, anything else
24 that you felt that you needed to raise in terms of discovery?
25 Otherwise we can move on to the other matters here.

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1 MS. JOHNSON: Yes, your Honor. Just three quick
2 things if you'll indulge me with respect to discovery.

3 THE COURT: Of course.

4 MS. JOHNSON: As I mentioned, our investigation is
5 continuing. So I understand that the Court has set a
6 December 31 deadline for discovery, but we may receive
7 materials after that time, at which point we will promptly
8 produce them to the defense.

9 We also have issued in March 2024 a corporate subpoena
10 to the defendant's company. And I mention this just to make
11 the Court aware of it. Counsel, the same counsel who
12 represents Mr. Combs represents his company, Combs Global.
13 Counsel has been making rolling productions of documents in
14 response to that subpoena. It is our understanding that the
15 productions are not yet complete, and we just wanted to apprise
16 the Court of the existence of that subpoena and Combs Global's
17 obligations under that subpoena, because that material is
18 important for our case.

19 THE COURT: Understood. And if there is any issues
20 along those lines, you'll bring that to my attention at the
21 appropriate juncture.

22 MS. JOHNSON: Of course, your Honor.

23 And then the other thing I wanted to flag for the
24 Court, and we flagged this for defense counsel as well, is that
25 the vast majority of electronic material here has to be

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1 reviewed for privilege. And much of it has to be reviewed for
2 Mr. Combs' privilege. So we will in short order begin making
3 productions of potentially privileged material that our filter
4 team has segregated to defense counsel for their review, so
5 that they may review the potentially privileged material, and
6 make privilege claims on it and log those privilege claims for
7 us. So that we have an understanding of what documents are
8 being withheld for privilege, and the non-privileged material
9 can then be released back to the case team for review.

10 THE COURT: Understood. And that's separate and apart
11 from the production to the defense of the extracted
12 information, right?

13 MS. JOHNSON: Precisely. The extracted information
14 that the defense is getting is a full extraction. It contains
15 all the data on the device.

16 Our filter review process, our filter team reviews the
17 full device, and removes, before the case team can see it, any
18 potentially privileged information. That set of potentially
19 privileged information will go to the defense so they are able
20 to make privilege calls.

21 And I flag this for your Honor simply because we will
22 need some of the privilege calls made in order to evaluate if
23 the government has motions.

24 THE COURT: Understood. Thank you. Anything else
25 with respect to discovery?

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1 MS. JOHNSON: No.

2 THE COURT: Thank you.

3 So Mr. Agnifilo, in terms of motions, I'll give you
4 some time, so I was thinking February 17, 2025, as a motions
5 deadline. You had inquired in the joint letter whether motions
6 could be made in advance of that deadline. The answer is yes.
7 You can make any application that you want and we're here and
8 we'll field it. But that's the deadline.

9 So opposition briefs by March 3, 2025, and replies by
10 March 10, 2025.

11 Let's have a next conference on December 18, 2024, at
12 2 p.m.

13 Obviously, if the parties discuss and there is either
14 not a need for that conference or you need one sooner or later,
15 you can just let the Court know and we'll have it set up.

16 So let's move to the defendant's motion for an
17 evidentiary hearing which was filed yesterday. The government
18 proposes that they be allowed to respond by October 30, which
19 is appropriate. And the defendant may submit a reply by
20 November 8, 2024.

21 I'll hear from you, Mr. Agnifilo, but my thinking is I
22 would get that briefing in, and the Court can determine at that
23 juncture whether an evidentiary hearing is warranted. However,
24 there is some other relief you are asking for in the interim,
25 so I happy to hear from you as to that.

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1 MR. AGNIFILO: Yes, thank you, your Honor. The only
2 relief I can ask for in the interim is the gag order that we
3 referenced. And the concern is that the agents have been
4 leaking grand jury information and making other types of
5 prejudicial statements to the press.

6 And while this started on the day of the searches, on
7 March 25, 2024, it continued throughout the lifespan of the
8 investigation, and most recently, two days after the arrest,
9 there were more such statements. And I don't need to get into
10 them, I put them in the papers. And the concern is -- and let
11 me back up for a second.

12 Part of the dialogue we've had with the government has
13 been around some of these issues. And we have contacted the
14 prosecutors, we contacted them early on, I think it was the
15 first week of April, if I remember correctly, and we said, in
16 essence, your agents are leaking information to the press. I
17 believe that they probably did something about it, I don't know
18 what. But I think they did something about it.

19 My concern is that it started again around the time of
20 the arrest. And so, whatever my colleagues with the government
21 did, didn't have the effect that we wanted it to have, which is
22 why I'm raising it to the Court.

23 And so I think the only type of interim relief that I
24 can plausibly ask for at this point would be the gag order that
25 was one of the forms of relief we asked for in the papers that

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1 we submitted.

2 THE COURT: All right. Ms. Johnson, I guess the
3 question is, what the defense is asking for maybe you really
4 don't have an objection to it, because you are going to follow
5 it in any event. It's not that much different from what Local
6 Rule 23.1 requires anyway.

7 But I'll hear the government's position on that
8 proposed order.

9 MS. JOHNSON: Your Honor, the government would
10 respectfully request that your Honor defer any ruling on a
11 proposed order until the Court has had a chance to review the
12 government's briefing in this case, the government's opposition
13 briefing with respect to the defendant's motion.

14 As previewed in our short letter last night, the
15 government believes that this motion is baseless, and it is
16 simply a means to try to exclude a damning piece of evidence
17 disguised with press statements.

18 I will note that one thing that is incredibly
19 significant about the press statements that are cited in that
20 motion is that not a single one of those alleged leaks are from
21 members of the prosecution team. They are alleged to be other
22 members of the agency. And that is significant in this
23 analysis.

24 So, the government would respectfully request that the
25 Court defer any ruling on this until after it's had a chance to

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1 review our papers.

2 But, of course, the government would agree not to
3 speak to the press, that is our general practice, and we will
4 of course -- we will affirm our obligations under 23.1, and I
5 do, after we're done discussing the motion, have an additional
6 item to raise with the Court with respect to 23.1.

7 THE COURT: Of course, and I am not imposing -- in
8 fact, I don't think the motion seeks any remedy at this point.
9 I think the motion was for an evidentiary hearing, and as I've
10 said, I'll hear the parties out on the briefing and then
11 determine whether a hearing is warranted.

12 But right now, the defense is just asking for an
13 order, counsel referred to it as a gag order. Really it will
14 just be an order forbidding government attorneys and agents
15 involved in this case from leaking any further information to
16 the media, which would cover -- and that's really an
17 overstatement. What the proposed order would be, would cover
18 all grand jury material as well as other non-public information
19 related to the investigation and prosecution of this case.

20 I hear you that you're going to do that anyway. And
21 so, what's the issue in imposing that order? Because at that
22 point, you would have an order that you could, for instance,
23 furnish to DHS agents, to the extent they're at all involved in
24 this, so they are aware of their obligations, which they might
25 not otherwise be aware of, given that the source of what the

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1 parties have been talking about is in a local rule for this
2 court. And it makes your life easier because they'd have that
3 order. I think that's really what counsel is saying.

4 Mr. Agnifilo, am I missing anything there?

5 MR. AGNIFILO: That's exactly right, your Honor.

6 MS. JOHNSON: Your Honor, the government has no
7 concern with affirming our obligations under 23.1, and our
8 obligations not to speak to the press. We have an objection to
9 language about future or further leaks. And we believe that if
10 any such order is entered, it should be a reciprocal order and
11 the defense should be bound by that order as well.

12 THE COURT: Mr. Agnifilo, any issues with that?

13 MR. AGNIFILO: None at all.

14 THE COURT: All right. So what I'm going to ask,
15 Mr. Agnifilo, maybe you can do it, is to submit a proposed
16 order for the Court to execute, it should be reciprocal, and it
17 should map on to the categories that are in your memorandum of
18 law. So the grand jury material and other non-public
19 information related to the investigation and prosecution of
20 this case. Make sure that Ms. Johnson and her team has an
21 opportunity to review that, and there may be no objection, but
22 I'll hear any objection, and then consider the order that you
23 submit.

24 MR. AGNIFILO: Thank you, your Honor.

25 THE COURT: Any other issues, Mr. Agnifilo, with

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1 respect to that motion at this juncture?

2 MR. AGNIFILO: Give me one second, Judge.

3 THE COURT: All right.

4 MR. AGNIFILO: No other issue. Thank you, Judge.

5 THE COURT: Okay. Ms. Johnson.

6 MS. JOHNSON: Yes, your Honor. I think what I wanted
7 to raise goes hand in hand with what we were just discussing.
8 But as your Honor knows, there are strict rules in the local
9 rules that limits the parties' abilities to make statements
10 that could interfere with a fair trial or the integrity of a
11 criminal proceeding.

12 We raised some concerns at the bail appeal with Judge
13 Carter with some of Mr. Agnifilo's press statements, and we'd
14 like to raise some additional concerns that we have today that
15 in our mind are even more serious than the ones that we raised
16 before.

17 Mr. Agnifilo recently sat down for an interview with
18 TMZ, where he baselessly accused the government of engaging in
19 a racist prosecution. And the government would submit that
20 these statements plainly run afoul of Local Criminal
21 Rule 23.1(d)(7) which says that asserting an opinion as to the
22 merits of a pending criminal case presumptively involves a
23 substantial likelihood that it would interfere with the fair
24 trial or otherwise prejudice the due administration of justice.

25 And I'll read one quote to your Honor, but there are

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1 several in the interview. Mr. Agnifilo said, "Let's switch our
2 focus to the government. In my opinion, I'm just going to say
3 it the way it is. No, no friend historically of the successful
4 black man. Okay. None. And they start making this case, in
5 my opinion, as a takedown of a successful black man. This is
6 the government scrutinizing his business, scrutinizing his
7 taxes. He does everything right."

8 So, we have serious concerns about these statements.
9 And they didn't stop just at this documentary. They've been
10 picked up by at least 15 media outlets since this documentary.

11 We think statements of this sort seriously risk a fair
12 trial in this case and the integrity of this proceeding. As
13 I've mentioned before, the government will affirm its
14 obligations under Local Rule 23.1, and we respectfully ask the
15 Court to direct all defense counsel to similarly affirm their
16 obligations.

17 THE COURT: Mr. Agnifilo.

18 MR. AGNIFILO: Yes, no, I absolutely affirm my
19 obligations under 23.1.

20 I was hoping that if issues would be raised today,
21 they would have been raised in the letter to your Honor
22 yesterday, so I can't say that I'm fully prepared to address
23 the merits of the issue.

24 But now that we have the gag order that's reciprocal
25 in nature, we'll absolutely abide by all local rules that

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1 govern our conduct. We take this seriously. We certainly
2 can't impugn the government for doing something that we would
3 do ourselves. We welcome that.

4 So, now that we have this rule in place, I think we'll
5 all be guided accordingly, and I don't think we'll have any
6 other issues.

7 THE COURT: And Ms. Johnson, you understand that if
8 there is a violation of this rule and you have an application
9 to make, same thing goes both ways, so you can bring that
10 application to the Court and I will consider it.

11 MS. JOHNSON: Thank you, Judge.

12 THE COURT: Thank you very much.

13 Any further issues, Ms. Johnson, to address at this
14 time?

15 MS. JOHNSON: No, your Honor. Thank you.

16 THE COURT: And Mr. Agnifilo, do you now consent to
17 the exclusion of time under the Speedy Trial Act?

18 MR. AGNIFILO: I do, your Honor. It's very clear that
19 the making of motions, the decision of motions is excludable
20 under speedy trial, and I very much consent.

21 THE COURT: I wanted to make sure that there wasn't an
22 issue there.

23 Ms. Johnson, do you have an application under the
24 Speedy Trial Act?

25 MS. JOHNSON: Yes, your Honor. The government would

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move to exclude time until our conference on December 18, 2024. Such an exclusion would be in the interests of justice because it would allow the government to continue to produce discovery, allow the defense to review discovery and contemplate potential motions, and in any event, much of that time will likely be tolled by the filing of the defense motion through its briefing and consideration by the Court.

THE COURT: I will exclude time under the Speedy Trial Act until December 18, 2024. I find that the ends of justice served by excluding such time outweigh the interests of the public and the defendant in a speedy trial, because time is needed for the production of discovery and review by the defendant, and time for the defendant to consider and prepare motions and to prepare for trial.

Mr. Agnifilo, any other issues that you'd like to raise here today?

MR. AGNIFILO: I'm taking a survey of my colleagues.

THE COURT: Please take your time.

MR. AGNIFILO: I see lots of negative head motions, so nothing else, Judge. Thank you so much.

THE COURT: All right. So I don't have any application relating to bail before me, so the defendant will remain in custody. If the defense has any application they would like to raise, then I'll certainly hear it.

Mr. Agnifilo, the one thing I did want to raise is

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1 there was a mention in the prior hearing about the MDC versus
2 the facility in Essex, and you were going to raise that with
3 the Court. There was a subsequent letter in which you
4 indicated to the Court there was no further issue to raise. I
5 wanted to make sure that I had checked everything off, that
6 there wasn't something there.

7 MR. AGNIFILO: Thank you, your Honor, for asking.
8 We're making a go of the MDC. And I have to say, and I have
9 said this publicly and I'll say it because your Honor asked.
10 The MDC have been very responsive to us.

11 The only issue that I foresee, and I don't think it
12 will be an issue, is if there is an issue with reviewing the
13 discovery in the prison. I think we have all of that ironed
14 out. I don't think it will be an issue. If it turns out to be
15 an issue, we'll come back to your Honor on notice to the
16 government.

17 THE COURT: Come back, raise it with me. If there is
18 a way that the Court can help, we will absolutely try to help.

19 MR. AGNIFILO: Thank you, your Honor.

20 THE COURT: All right. If there is nothing else,
21 thank you very much, everyone, for joining. I thank family
22 members who came. I know you came a long way.

23 Thank you very much. We are adjourned.

24 (Adjourned)